HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. S/S No. 1335/05 S/S
Smt. Kalawati

Vs

State of Uttaranchal
& others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 3.3.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1335 (SS) OF 2005

Smt. Kalawati,
W/o late Sri Govind Lal Sah,
R/o Sharda Range, Tanakpur,
District – Champawat. .....Petitioner.

Versus

1. State of Uttaranchal, through Forest Secretary, Uttaranchal.
2. The Divisional Forest Officer, Haldwani, District Nainital.
3. The Chief Conservator of Forest (Kumaon), Nainital.

.....Respondents.

Sri U.S. Kalakoti, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated: 03.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to appoint the son of the petitioner namely Rakesh Sah under the Dying in Harness Rules, 1974, and to pay the petitioner back salary, due pension and gratuity with interest within the time allowed by this Hon'ble Court.

2. Briefly stated, the husband of the petitioner late Sri Govind Lal Sah, R/o Sharda Range, Tanakpur, District Champawat was appointed as a Chaukidar in the department of respondents on 18.07.1987 as a daily wage employee. He died on 16.08.2003 while on duty. He worked in the department for a period of 15 years. He is survived by his wife Smt. Kalawati i.e. the petitioner, sons Rakesh Sah and Deepak Sah, aged about 26 and 24 years respectively.

3. On 27.08.2003, the petitioner made a representation for appointment of her son namely Sri Rakesh Sah on compassionate ground under the U.P. Recruitment of

Dependants of Government Servants Dying in Harness Rules, 1974, but the same has not been considered.

4. Petitioner has submitted that several times she has met with respondent no. 3 and has requested him to do the needful but no action was taken by him.

5. Petitioner has submitted that her financial condition, after the death of her husband, has become very poor and she is hardly in a position to arrange two times meal to feed her family.

6. It has further been submitted by the petitioner that one Nawal Kishore Pant, who was also a daily wage employee in the same department died during the course of his employment and one of his legal heirs has already been given the appointment under the Dying in Harness Rules.

7. A counter affidavit has been filed by the State. Relevant para 8 and 12 are quoted below:-

"8. That the contents of Para 6 of the writ petition are not admitted as stated. It is pertinent to mentioin here that under the U.P. Recruitment, dependent of Government servant Dying in Harness rules 1974, it is clearly mentioned that those employees, who are regularized in the service after the death of their dependents may be given the service on the death of the said persons and there is no provision for any legal order of any deceased daily rated employee. An extract of the said Rule 1974 is being annexed herewith and marked as ***Annexure CA-2*** *to the affidavit.*

12. That in reply of Para 10 of the writ petition it is relevant to mention here that the deceased Govind Lal Shah was appointed ion the department as a daily rated employee and as per Government order dated 29 June 1991 the direct recruitment of the daily rated employee is being closed in the department and it is pertinent to mention here that the

deceased services are not comes under dying in harness rules 1974, in which there is no provision is being given for the appointment of the legal heir of the daily rated employee after his death."

8. In ***Sushma Gosain Vs. Union of Union and others (1989) 4 SCC 468,*** *it has been held that daily wager or temporary employees are also entitled for the benefit of the Rule. It has been held as under:-*

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

9. The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** *has relied upon the judgment of* ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** *The relevant observations are quoted below:-*

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment,

the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

10. In ***Santosh Kumar Mishra Vs State of U.P [(2002)1 UPLBEC 337****, it has been held that daily wager or temporary employees are also entitled for the benefit of the Rule. It has been held as under:-*

> *"Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (Supra), for stressing his submission that the petitioner's father would be deemed to have been a regular Government servant in view of the fact that his appointment has been converted into work charge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of Smt. Pushp Lata Dixit Vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591, the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Pushp Lata, was working as a Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness Rule was rejected by the Court and the directions were issued to accommodate the petitioner*

(Smt. Pushp Lata) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi Vs. State of U.P. and others, reported in 1998 (79) FLR 608, was also allowed in which the High Court found that the petitioner's husband in that case has satisfactorily worked for about 10 years until his death and though he may be a daily wager, the petitioner can be accommodated on compassionate grounds under Dying in Harness Rules. In the case of Smt. Saroj Devi Vs. State of U.P and others, reported in 1999 (3) ESC 2187 (All): 1 UPLBEC (Alld.) (Sum) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy."

" The Apex Court was considering the scheme and the status of a work-charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge employee and he continues to be a work charge employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law of any Government order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a work charge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State Counsel despite being specifically asked for."

" It may also be taken note of that if daily wager or a work charge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy."

11. The petitioner has also relied upon the judgment of **Mst. Mangali Devi Vs. State of Uttaranchal, 2004 (1) U.D. 144,** where the dependents of a temporary employee have been held entitled for getting compassionate appointment.

12. It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

13. In view of the above, writ petition deserves to be allowed. A writ of mandamus is issued directing the respondent to consider the case of the petitioner for appointment under Dying in Harness Rules and further release all the dues in her favour within a period of two months from the date of presentation of the certified copy of the order.

14. Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

03.03.2006
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